

Statement on Signing the Indian Self-Determination and Education Assistance Act Amendments of 1988

October 5, 1988

Today I have approved H.R. 1223, the "Indian Self-Determination and Education Assistance Act Amendments of 1988." This Act will assist in furthering Administration efforts to transfer the development and operation of programs from the Federal Government to Indian tribes. Tribal self-governance allows tribes more freedom to design programs to serve the specific needs of their members.

A provision in section 205 of the Act states that the Secretaries of the Interior and Health and Human Services shall reduce funding to Indian tribes if so directed by a statement from a Member of Congress that accompanies a conference report. Because this provision purports to authorize a process altering the legal duties of Executive branch officials, without participation by both Houses of Congress and the President, it does not conform to the requirements for presentment and bicameralism articulated in the Constitution and enunciated by the Supreme Court in *INS v. Chadha*, 462 U.S. 919. I want to stress, however, that this unconstitutional provision is severable from and does not affect the otherwise constitutional provisions of this Act.

Section 205 of the Act also purports to require the Secretary of the Interior to transmit to the Congress a report with legislative recommendations on the use of funds allocated to Indian tribes and their members. Because the Constitution grants the President authority to recommend such measures as he shall judge necessary and expedient, this provision must be construed as advisory rather than mandatory.

Section 305 of the Act requires the Secretary of the Interior to submit to the Congress a semiannual report for 5 years on the relative costs and benefits of the new Tribal Self-Governance Project. The report is to be based on "baseline measurements" jointly developed by the Secretary and participating tribes. While the Congress can establish constitutional offices to assist the President, the obligation to faithfully execute the laws cannot be shared with "participating tribes." Accordingly, this provision must be construed as a nonbinding request that the Secretary consult with the tribes in developing the relevant measurements.

Ronald Reagan

The White House,

October 5, 1988.

Note: H.R. 1223, approved October 5, was assigned Public Law No. 100 - 472.